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present. With this case is a very extensive note marshalling the authorities on the subject of view by jury, and showing that there are several different theories entertained by the courts.

A PROVISION that a life insurance policy shall be incontestable after one year is held, in *Clement* v. *New York Life Ins. Co.* (Tenn.), 42 L. R. A. 247, to be neither unreasonable nor contrary to public policy, but, while it is held applicable to fraud in procuring the policy, it is held inapplicable to the defense that the plaintiffs had procured the issue of the policy and its transfer to them as a speculation, and that it was therefore a gambling or wagering contract. With this case is an extensive note on incontestable life policies.

AFTER-ACQUIRED lands are held, in *Moore* v. *Jordan* (N. C.), 42 L. R. A. 209, to be subject to the lien of previously docketed judgments, not according to the dates when they were docketed, but by *pro rata* application of the proceeds. A note to this case reviews the authorities on the priority of judgment liens upon after-acquired property. Whatever may be the rule in Virginia as to judgments recovered prior to the adoption of the Code of 1887, it is now expressly provided that judgment liens shall attach in the order of their dates. Va. Code, sec. 3576; see *Rhea* v. *Preston*, 75 Va. 757, 768; 4 Va. St. Bar Asso. Reports, 135.

STATUTE OF LIMITATIONS—AGENT—ATTORNEY AT LAW.—The decision of the Virginia Court of Appeals, in *Hasher* v. *Hasher*, 32 S. E. 40, that a collecting agent may plead the statute of limitations against his principal's demand for money collected, is an important one. The same principle is, of course, applicable to attorney and client. It is believed that there is a common notion amongst lawyers that an attorney is a trustee of funds collected, and that the statute of limitations does not begin to run in such case until the holding becomes hostile. The question was decided in accordance with the later case, by the Virginia court, in *Kinney* v. *McClure*, 1 Rand. 284, not cited in the opinion. The authorities are collected in 3 Am. & Eng. Encyc. Law (2d ed.), 399–401.

ESTATES LIE IN GRANT AS WELL AS LIVERY.—Section 2417 of the Code of Virginia provides that "all real estate shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as livery."

This provision has doubtless puzzled many lawyers, and we have more than once heard members of the bar question whether a freehold estate may not still be conveyed in Virginia by livery of seisin only. The explanation is that until the adoption of this statute at the revisal of 1849, a deed and livery were both essential for the conveyance of the immediate freehold, save where livery was dispensed with by a conveyance operating under the statute of uses. The Code of 1819 dispensed with livery as to estates commencing *in futuro* (now sec. 2418 of the Code), but not until the revisal of 1849 was the immediate freehold capable of being transferred by a simple deed, without livery, save, as stated, by a conveyance operating under the statute of uses. The latter required a consideration either of blood or a valuable consideration. But there had long existed in Virginia, a provision (now contained in section 2413 of the Code), that "no estate of

inheritance or of freehold, or for a term of more than five years, in lands, shall be conveyed unless by deed or will" ["unless declared by writing, sealed and delivered" in the Code of 1819 (p. 361)]. So that up to the revisal of 1849, both a deed and livery of seisin were necessary, except in the cases already mentioned. The livery passed title, and the deed was evidence of it (Code 1819, p. 361–2.) The present provision of section 2417, that "all real estate shall, as regards the immediate freehold thereof, lie in grant *as well as* livery," must be construed with section 2413 which declares that no freehold shall pass except by deed or will; hence the practical effect of the latter statute is to render livery unnecessary in any case, and to permit the conveyance of the immediate freehold by simple words of grant, without reference to the statute of uses, and therefore without any consideration whatsoever.

This is explained at some length, by Brannon, P., in *Lauck* v. *Logan* (W. Va.), 32 S. E. 986. The question was not involved, in the case, but counsel thought it was, and we are indebted to the court's "deference to counsel" for the discussion.

DEED TO TAKE EFFECT AT DEATH OF GRANTOR.—The question whether a deed, which provides on its face that it is not to take effect until the death of a grantor, is to be construed as a will or not is a perplexing one, and has been recently discussed in these columns. 4 Va. Law Register, 474, 710.

The Supreme Court of West Virginia has recently wrestled with the question, and decided that such an instrument, under the particular circumstances, was a conveyance *inter vivos*, and not testamentary. *Lauck* v. *Logan*, 31 S. E. 986. Nobody can find fault with the principle which the court laid down, but, if fault there be, it is in its application.

"The intention of the maker," says, Brannon, P., "as to the character of the estate conveyed, is the criterion by which the court determines whether it is a deed or will, and if the intention gathered from the whole paper is that no estate is to pass until his death, it is a will, not a deed. It may confer a present vested estate, though the right of possession and enjoyment under it may be in the future, and it is a good deed; but if it vests no estate whatever until death, it is a will."

The paper in question was in the usual form of a deed of conveyance, with general warranty of title, and the wife of the grantor united to release her dower rights. It was duly acknowledged for recordation, and was delivered to the grantee. The final clause of the paper was as follows: "But it is hereby distinctly understood and stipulated that this deed shall take and be in full force and effect immediately after the said William Logan (grantor) shall depart this life, and not sooner."

Whatever construction the technical rules of law might have called for, one cannot but feel that the court's decision carried out the real intention of the grantor. Certainly the common sense construction, which a plain business man, unlearned in the technicalities of the law, would put upon such an instrument, in the light of the surrounding circumstances, would be that by use of the words "shall take effect at my death and not sooner," the grantor meant that the enjoyment only should be postponed.

This question is touched upon in *Pollock* v. *Glassell*, 2 Gratt. 449. In that case the grantor executed an assignment of certain bonds to her daughter. On the back of the assignment, was the following signed endorsement: "For E. Pollock